NATURIST ROCHESTER NEWSLETTER

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TOPFREE SEVEN ACQUITTED

BUT DISCRIMINATORY LAW UPHELD
APPEALS EXPECTED

Rochester's Topfree Seven were acquitted in a decision issued by City Court Judge Herman Walz on December 17, 1986. The seven women, Kathie Reilley, Ramona Santorelli, Mary Lou Schloss, Elise Tooley, and Lynn Zicari from Rochester as well as Nikki Craft from Wisconsin and Debora Seymour from Oregon had been charged with "exposure of a person" for removing their shirts in Cobbs Hill Park last summer. The Topfree Seven had challenged the constitutionality of the New York State law which requires women, but not men, to cover their chests in public. Judge Walz summarized his 18 page decision: "I conclude that the statute is constitutional. However, I also conclude that as applied in this particular case the statute violates their rights to free expression as guaranteed by the federal and state constitutions."

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Although acquitted, the Topfree Seven and their supporters reacted with shock and disappointment that Walz had rejected their primary challenge to the constitutionality of the law: that it discriminates against women and denies them equal protection of the law. Walz wrote: " There is no fundamental right to appear nude or topfree in public... Today, community standards as perceived by the Legislature regard the female breast as an intimate part of the human body. Therefore, the state may legitimately enforce this standard by requiring that the female breast not be exposed in public places." Courts have ruled that discrimination based upon gender (unlike discrimination based upon race or religion) may be justified if it serves a substantial government interest. Walz wrote: "The classification serves important government objectives and the discriminatory means employed are substantially related to the achievement of those objectives."

The Topfree Seven were acquitted in this case since their being topfree in public was associated with otherwise protected free expression (e.g. press releases, fliers, media interviews). This opens the door to anyone being nude in New York if they are clearly advocating a cause such as establishment of a clothing optional beach. If Walz's decision is upheld in higher courts, naturists should be able to enjoy nude beaches legally if they distribute leaflets, carry signs, or paint messages on their backs. Since the Topfree Seven were acquitted, they cannot initiate an appeal to Walz's decision in higher courts. However, District Attorney Howard Relin, after some waivering, is currently planning to appeal. He has been made aware that if he doesn't appeal, women would repeat the action next summer, leading to another time consuming and costly trial, next time without the freedom of expression defense. That way the women would either get a favorable decision on the topfree equality issue, which DA Relin would probably appeal, or lose and be eligible to appeal to higher courts themselves. Relin also understands that unless the law is appealed, naturists will hit the beaches next summer protected by signs and leaflets.

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The Topfree seven's actions have served as an important tool to educate people. The case received front page headlines in the local papers on several occasions. Radio and television coverage was extensive.

The case became a major topic of conversation in Rochester for several months. Most editorials were favorable. The topfree equality cause received national and international attention with members of the Topfree Seven appearing on the Donohue Show, AM America, The Morning Show with Regis Philbin, and People Are Talking. There was even a radio interview from Australia and a news story in a Hong Kong paper. People who at first thought the cause was trivial later gave the cause serious support. (continued on page 2)

Winter Activities

The swimming pool, whirlpool, and sauna at the Schloss home, 237 Vasser St., are now available approximately five days a week. Call 244-1219 between 6:00 p.m. and 7:30 p.m. on the evening you wish to attend to determine whether the facilities are open. Please remember to bring a towel and a contribution.

Topfree Seven continued . . .
The trial lasted 3 1/2 days. An additional half day was devoted to oral arguments after all legal briefs had been submitted. Judge Walz allowed the defense wide latitude in presenting evidence. Attorneys Larry Kasperek and David Moss plus Mary Lou Schloss who represented herself worked together to organize and present the defense. Seven expert witnesses testified. All members of the Topfree Seven took the stand to explain why they joined in the civil disobedience.

The Topfree Seven contended that their action was constitutionally protected as freedom of expression since it was the most effective method to convey important ideas and was associated with other forms of protected speech. This was the rationale used by Judge Walz to acquit the women. The defense also asserted that the law is unconstitutional since it is vague and not consistently enforced.

However, the major defense position was that the "exposure of person" law is unconstitutional because it discriminates against women without any substantial government interest which could justify such discrimination. The Topfree Seven introduced opinion polls, evidence that women regularly enjoy parks and beaches topfree around the world and even in New York State, and the growing acceptance of women's breasts in the media to demonstrate that the Topfree women are not offensive to general community standards. They introduced a survey which found that over 2,000 women use New York State parks and beaches topfree on hot summer weekends without harassment. They contended that protecting a few people from being offended by the sight of breasts (which they can easily avoid viewing) in no way can justify discrimination against women.

The defense argued that the law is actually detrimental to important government interests. Requiring women, but not men, to conceal their breasts in public damages women's body self-concept and physical and mental health. Depression, eating disorders, avoidance of early detection and treatment of breast cancer, and breast augmentation becoming the leading cosmetic surgery in the United States are related to the attempt to attain the unnatural dimensions of the beauty ideal portrayed by media advertising and beauty pagents.

Requiring the concealment of women's breasts produces an unhealthy obsession with breasts as sexual objects which interferes with the formation of relationships of equality between women and men. Under the New York law, breasts may be legally used in topless bars to sell drinks to men while women may not be topfree on a beach for their own pleasure.

The law discourages breastfeeding at a time when the promotion of breastfeeding is an objective of both the United States Surgeon General and the New York State Commissioner of Health.

Even the Barbie doll, with her unrealistic figure and breasts that defy gravity, was introduced to show that girls grow up with unattainable bodily images when they are denied the sight of the variety of breasts on real women in natural, nonsexual settings.

Unfortunately, Judge Walz ignored this evidence while accepting the prosecutions's assertion that the Legislature has the authority to define and protect community standards regardless of the negative impact upon women and society in general. He recognized a substantial government interest in protecting narrowly defined and not uniformly accepted community standards while ignoring important government interests which are damaged by the law. It is this judgment that will be appealed to higher courts. Topfree equality remains the goal.

The Topfree Seven and their support group thank all those who have wished them well and those who have contributed to the legal defense fund. The fund is now depleted. Contributions are needed to finance the appeal. Please make checks payable to:

Topfree Seven
237 Vasser Street
Rochester
New York 14607

NUDIST PARK GUIDE AVAILABLE

The fifteenth edition of the American Sunbathing Association's Nudist Park Guide is now available. The Guide has complete listings (descriptions, facilities, directions) for most nudist parks in the United States and Canada. Contact Morley Schloss at 244-1219. The cost is $9.00, three dollars off list price.